

UNITED STATES COURT OF APPEALS

JUN 25 2008

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

DONALD L. CAVINESS,

Petitioner - Appellant,

v.

TOM FELKER, Warden,

Respondent - Appellee.

No. 07-16379

D.C. No. CV-04-02629-MCE/JFM
Eastern District of California,
Sacramento

ORDER

Before: KLEINFELD and N.R. SMITH, Circuit Judges, and MILLS,* District Judge.

The Memorandum Disposition filed May 16, 2008 is amended as follows:

1. To the eighth line of the second full paragraph, after the citation to 28 U.S.C. § 2254(d)(1), the following footnote is added:

“The case appellant cites in his petition for rehearing, Adams v. Carroll, 875 F.2d 1441 (9th Cir. 1989), is inapposite because it came down before Congress

* The Honorable Richard Mills, Senior United States District Judge for the Central District of Illinois, sitting by designation.

passed AEDPA in 1996 and was decided without the deferential standard in § 2254. Also, the cases differ factually, the context making Caviness's statement far more plainly equivocal than in Adams."

With this amendment, the panel has voted to deny the petition for rehearing. Judges Kleinfeld and Smith have voted to deny the petition for rehearing en banc, and Judge Mills has recommended the same.

The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on the petition for rehearing en banc. Fed. R. App. P. 35(b).

The petition for rehearing and the petition for rehearing en banc are DENIED. No further petitions for rehearing or petitions for rehearing en banc will be entertained.